Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1979

No. 79-1741

ROY TIBBALS WILSON, CHARLES E. LAKIN, FLORENCE LAKIN, HAROLD JACKSON, DARRELL L., HAROLD, HAROLD M. and LUEA SORENSON,

Petitioners,

No. 79-1744

RGP, INC., OTIS PETERSON, AND TRAVELERS INSURANCE COMPANY,

Petitioners,

vs.

OMAHA INDIAN TRIBE AND UNITED STATES OF AMERICA,

Respondents.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL BRIEF OF THE ABOVE-NAMED PETITIONERS

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Pursuant to Rule 22.6 of the Rules of the Supreme Court of the United States, the Petitioners in the above-captioned case file this supplemental brief calling attention to an intervening matter not existing at the time of these Petitioners' last filing.

Of significance on the point that the constitutionality of 25 U. S. C. § 194 is "an important question of federal law which has not been, but should be, settled by this Court[1], is the filing on July 18, 1980 of a Complaint in the

[1] The importance of this question is best shown in the American Land Title Association amicus brief, pp. 2-6. See also

(Continued on the next page)

United States District Court for the District of South Dakota, Western District, Civil No. 80-5062, the Oglala Sioux Tribe of the Pine Ridge Indian Reservation, plaintiff, vs. The United States of America, et al., defendants. It asks that the title to the Black Hills (about 10,000 square miles, about 7,000,000 acres[2]) be quieted in the Oglala Tribe; that $10,000,000,000 in damages be awarded the Tribe from the individual defendants and that $1,000,000,000 in damages be awarded the Tribe from the United States. It invokes 25 U. S. C. § 194 to shift the burden of proof to the defendants. The Oglala Tribe asserts that it was not represented nor was a party in the case of *United States, Petitioner, vs. Sioux Nation of Indians,* No. 79-639 in this Court (decided June 30, 1980; 48 Law Week 4960), and is not bound by any of the stipulations or the decision in that case.

The defendants in the case are the United States, the Secretary of the Interior, the Secretary of Agriculture, the State of South Dakota, seven counties, nine municipalities, forty-four individuals, and twenty-nine corporations "on their own behalf and as representatives for all other persons and corporate entities similarly situated."

In the allotted space we cannot reproduce the entire Complaint. Some excerpts follow:

> 28. In *United States v. Sioux Nation of Indians,* — U. S. — (1980), an action for money compensation only, the United States Supreme Court found sub-

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(Continued from previous page)

the amicus brief of Gordon Dahl and 81 Other Farm Owners in Monona County, pp. 8, 9.

[2] Exhibit "A", plat attached to said complaint, showing area claimed, is reproduced at the end of this brief.

stantially all of the facts alleged in paragraphs 16 through 23. As a party to that action, the United States is estopped to deny these facts.

29. *United States v. Sioux Nation of Indians, supra,* involved trial *de novo* of certain claims for money compensation formerly before the Indian Claims Commission, and was specially authorized by P. L. 95-243, 92 Stat. 153 (1978). The Oglala Sioux Tribe allowed its contract of retainer with Indian claims counsel to expire in May of 1977, and was neither represented nor a party in the *Sioux Nation* proceedings, having expressed its intention to seek instead actual possession and ownership of the disputed territory. Former counsel nevertheless purported to continue to act as legal representative for the Oglala Sioux Tribe before the Court of Claims and the United States Supreme Court, making claims and concessions without authority. The United States is estopped from denying that counsel was not acting properly on behalf of the Oglala Sioux Tribe because, in accordance with the terms of the Indian Reorganization Act of 1934, 25 U. S. C. § 476, the Indian Claims Commission Act of 1946, 25 U. S. C. § 70n, and Article IV of the Oglala Sioux Tribal Constitution, no contract for legal representation of the Oglala Sioux Tribe in this matter could have been lawful or effective without the prior approval of the Secretary of the Interior. The Secretary last approved such a contract in May of 1967, which contract expired in May of 1977.

30. Counsel for those Sioux tribes that were parties to *United States v. Sioux Nation of Indians* stipulated that the United States' entry, occupation, and possession of the land described in paragraph 16 had constituted a lawful exercise of the United States' power of eminent domain under the Fifth Amendment. The United States Supreme Court expressly reserved the issue of the Constitutionality of the United States' action. Since it was not represented nor was a party in that proceeding, the Oglala Sioux

Tribe is not bound by stipulations of counsel nor limited to a prayer for just compensation, and *Sioux Nation* does not and cannot bar the present action.

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44. As its final claim for relief against the federal defendants, the State of South Dakota and its political subdivisions, and the individually named defendants, plaintiff alleges that it is entitled to shift the burden of proof as to right, title and ownership of the territory described in paragraph 16 because:

A. Shifting the burden of proof is required by 25 U. S. C. § 194, in that this action involves a "trial about the right of property in which an Indian may be a party on one side, and a white person on the other."

WHEREFORE, plaintiff prays that this court:

1. Quiet the title of the Oglala Sioux Tribe to the territory described in paragraph 16, restoring to the Oglala Sioux Tribe absolute undisturbed dominion, use and possession of the same;

2. Declare that the right of the Oglala Sioux Tribe to hunt within and beyond the limits of said territory continues undiminished.

3. Enjoin the United States from removing, or permitting others to remove minerals, timber, and other resources from said territory, and from committing any waste thereon;

4. Enjoin the State of South Dakota, its political subdivisions, and the individually named defendants from removing, or permitting others to remove minerals, timber, and other resources from said territory, and from committing any waste thereon;

5. Enjoin the United States, and in particular, defendants Andrus and Bergland, from further interfering with Oglala Sioux use of said territory for subsistence and religious purposes;

6. Award plaintiff damages against the individually named defendants in the amount of ten billion dollars ($10,000,000,000.) for trespass and waste;

7. Award plaintiff damages against the United States in the amount of one billion dollars ($1,000,000,000.)) for hardship and suffering caused by denying plaintiff access to and use of said territory;

8. Shift the burden of proof of right and title to the defendants; and

9. Such other relief as this court may deem just and proper.

Dated this 18th day of July, 1980.

We submit that the filing of this suit by the Oglala Sioux Tribe demonstrates that Section 194 will be an important factor in Indian litigation. We have no up-to-date information on the subject, but there would seem to be every reason to believe that in many of the cases listed on Page 3 of the American Land Title Association amicus brief, the pleadings have been amended to invoke Section 194. With Section 194 involved in so much important litigation, the question of whether or not it is constitutional should be settled by this Court at the earliest opportunity.

Respectfully submitted,

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Exhibit 'A'

LOCATION OF CONTESTED AREA WITHIN THE EXTERIOR BOUNDARY of SOUTH DAKOTA